IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

WP(C).No. 37295 of 2003(M)

PETITIONER:

K.C.SHAJAN, CHAUFFEUR, KERALA HOUSE,
S.JANTAR MANTAR ROAD, NEW DELHI 110 001.

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS:

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1. STATE OF KERALA REP. BY SECRETARY,
DEPARTMENT OF TOURISM, SECRETARIAT,
THIRUVANANTHAPURAM.

2. RESIDENT COMMISSIONER AND CONTROLLER,
KERALA HOUSE 3, JANTAR MANTAR ROAD,
NEW DELHI 110 001.

3. DIRECTOR, DEPARTMENT OF TOURISM,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.BASANT BALAJI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/12/2006, THE COURT ON 15/12/2006 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1 APPOINTMENT ORDER DT 25.10.97.

P2 RECOMMENDATION DT 31.7.02.

P3 TRANSFER ORDER DT 7.1.03.

P4 ORDER DT 24.1.03.

P5 JUDGMENT DT 25.6.03 IN OP.3531/03.

P6 ORDER DT 26.7.03.

P7 PROVISIONAL SENIORITY LIST OF CHAUFFEURS.

P8 GPF ANNUAL ACCOUNTS STATEMENT.

P9 COMMUNICATION OF R2 DT 12.9.97.

P10 ORDER DT 30.3.02.

P11 ORDER DT 29.9.97.

P12 ORDER DT 19.8.00.

RESPONDENTS' EXHIBIT:

R1(A) GO DT 22.11.1990.

TRUE COPY

P.A.TO JUDGE

S. SIRI JAGAN, J.

W.P. (C) No. 37295 OF 2003 M

Dated this the 15th day of December, 2006

J U D G M E N T

The petitioner entered service as a Chauffeur at the Kerala House, New Delhi. In the year 1997, he was appointed by Ext.P1 order. According to him, he was selected for the post by the Government, after conducting the selection process by inviting applications through notifications in the news papers, conducting an interview and selecting the petitioner as per a rank list prepared for that purpose. Since the petitioner's aged parents are living in Kasaragod and there was nobody to look after them, the petitioner wanted to come back to Kerala. He filed an application for transfer. The same was recommended by the Resident Commissioner of Kerala House by Ext.P2. Pursuant thereto, by Ext.P3 order, the Director of Department of Tourism, under whom the Kerala House is functioning, passed Ext.P3 order dated 7.1.2003 transferring the petitioner to the Tourism Department as per G.O.(MS) 4 of 1961 as if the same was an inter departmental transfer. He was directed to report for duty before the Executive Engineer, Tourism Garage, Thiruvananthapuram for appropriate posting orders. However, the Controller of Kerala House, by Ext.P4 order, informed the petitioner

that he cannot be relieved from his duties until further orders from the Government. Since nothing happened thereafter for several months, the petitioner approached this court by filing OP.No.3531/2003, wherein by Ext.P5 judgment, a learned Single Judge of this court directed the Government of Kerala to take a decision as to whether Ext.P3 order has to be implemented or not. Pursuant thereto, the Government passed Ext.P6 stating that the transfer of the petitioner was cancelled by letter dated 2.6.03 under intimation to the Director of Tourism and Additional Resident Commissioner of Kerala House. This order is under challenge in this original petition. The contention of the 1st respondent is as contained in the counter affidavit filed in this case, according to which since this is an inter departmental transfer, the same is governed by Ext.R1(a), as per which inter departmental transfer of the candidates appointed from the list, which is exclusively prepared for a particular department, to other departments, could not to be allowed. The essence of the contention is that Kerala House is a separate department as distinct from department of Tourism of the Government and since the petitioner was appointed from a list exclusively prepared for Kerala House, he is not entitled to inter departmental transfer.

2. I have heard the learned counsel for the petitioner as also the learned Government Pleader. Even at the outset, I must say that there are very many loose ends in respect of the contention of the 1st

respondent as obtaining in the counter affidavit. The counter affidavit does not say that the Kerala House is a separate department distinct from the Tourism Department. On the other hand, it is specifically admitted that the Kerala House is a unit of Tourism Department. Secondly, as pointed out by the petitioner by producing Ext.P7, the seniority list of Chauffeurs of Department of Tourism contains the seniority list of Chauffeurs in Kerala House also. Thirdly, by Ext.P10, even the Additional Resident Commissioner and Controller of Kerala House, New Delhi, who has passed Ext.P4 memo, himself has passed Ext.P10 order, whereby one T.Mohanan, room boy of Kerala House, New Delhi, was transferred to Government Guest House, Kovalam. Exts.P11 and P12 documents also would go to show that the contention of the 1st respondent that Kerala House is separate water-tight department as distinct from Tourism Department is unacceptable. The Government Pleader could not explain to me as to whether the Kerala House is a separate department also. On the other hand, he candidly admits that it is attached to the Tourism department. In the above circumstances, I am not in a position to come to a conclusion that Kerala House is a separate and distinct department vis-a-vis the Tourism department. If that be so, the transfer of the petitioner from Kerala House to the Tourism department cannot be considered as an inter departmental transfer as held by the respondents. If it is not an

inter departmental transfer, then Ext.R1(a) could not have any application to the case of the petitioner.

3. Apart from this, there is no explanation before me as to why the petitioner cannot be offered the same facility of transfer as granted to another employee of Kerala House, by Ext.P10 order. The 1st respondent has also got a case that inter departmental transfers can be made by the Government alone, which is also belied by Ext.P10. The Government has not chosen to interfere with Ext.P10 although the same has been forwarded to the Secretary to Government, General Administration Department as also the Director of Tourism as is evident from Ext.P10 itself.

4. I may also note that in Ext.P8, which is issued by the office of the Accountant General, Thiruvananthapuram, regarding the annual general provident fund accounts statement of the petitioner, it is specifically stated that the unit to which the petitioner belongs, is the Tourism department.

5. Apart from this, equity is also in favour of the petitioner. I am unable to understand why the Government takes such uncharitable and discriminatory attitude towards lowly paid employees, especially when they themselves are not very sure as to whether the Kerala House is a separate department distinct from the Tourism department, at the same time, maintaining that Kerala House is a unit of the Tourism

department. In the above circumstances, I quash Ext.P6 order of the Government and direct the 1st respondent to reconsider the matter in the light of the observations contained in this judgment. Orders in this regard shall be passed, within two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

(S. SIRI JAGAN, JUDGE)

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